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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

**Sunny Wiltbank**, an  
individual;

Plaintiff,

v.

**Portfolio Recovery**  
**Associates, L.L.C.**, a  
Delaware limited liability  
company;

Defendant.

No.

**COMPLAINT**

(Jury Trial Demanded)

Plaintiff alleges as follows:

**I. Preliminary Statement**

1. Plaintiff brings this action for damages based upon Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* (hereinafter "FDCPA"). In the course of attempting to collect a debt allegedly owed by Plaintiff, Defendant engaged in

1       deceptive, unfair and abusive debt collection practices  
2       in violation of the FDCPA. Plaintiff seeks to recover  
3       actual damages, and statutory damages, as well as  
4       reasonable attorney's fees and costs.

5                   **II. Statutory Structure of FDCPA**

6   2. Congress passed the FDCPA to eliminate abusive debt  
7       collection practices by debt collectors, to insure that  
8       those debt collectors who refrain from using abusive  
9       debt collection practices are not competitively  
10      disadvantaged, and to promote consistent state action to  
11      protect consumers against debt collection abuses. FDCPA  
12      § 1692.

13   3. The FDCPA is designed to protect consumers who have been  
14      victimized by unscrupulous debt collectors regardless of  
15      whether a valid debt exists. Baker v. G.C. Services  
16      Corp., 677 F.2d 775, 777 (9th Cir. 1982).

17   4. The FDCPA defines a "consumer" as any natural person  
18      obligated or allegedly obligated to pay any debt. FDCPA  
19      § 1692a(3).

20   5. The FDCPA defines "debt" as any obligation or alleged  
21      obligation of a consumer to pay money arising out of a  
22      transaction in which the money, property, insurance, or  
23      services which are the subject or the transaction are  
24      primarily for personal, family, or household purposes.  
25      FDCPA § 1692a(5).

1 6. The FDCPA defines "debt collector" as any person who  
2 uses any instrumentality of interstate commerce or the  
3 mails in any business the principal purpose of which is  
4 the collection of any debts, or who regularly collects  
5 or attempts to collect, directly or indirectly, debts  
6 owed or due or asserted to be owed or due to another.

7 FDCPA § 1692a(6).

8 7. Any debt collector who fails to comply with the  
9 provisions of the FDCPA is liable for any actual damage  
10 sustained; statutory damages up to \$1,000; attorney's  
11 fees as determined by the Court and costs of the action.  
12 FDCPA § 1692k.

### 13 **III. Jurisdiction**

14 8. Jurisdiction of the Court over this action and the  
15 parties herein, arises under 15 U.S.C. § 1692k(d)  
16 (FDCPA), and 28 U.S.C. §1337. Venue lies in the Phoenix  
17 Division of the District of Arizona as Plaintiff's  
18 claims arose from acts of the Defendant perpetrated  
19 therein.

### 20 **IV. Parties**

21 9. Plaintiff is an individual residing in Pinal County,  
22 Arizona.

23 10. Plaintiff is allegedly obligated to pay a consumer debt.

24 11. Plaintiff is a "consumer" as that term is defined by  
25 FDCPA § 1692a(3).

1 12. Defendant Portfolio Recovery Associates, L.L.C.  
2 (hereinafter "Portfolio") is a Delaware limited  
3 liability company doing business within the State of  
4 Arizona.

5 13. Portfolio regularly collects or attempts to collect  
6 debts owed or asserted to be owed or due another.

7 14. Portfolio regularly collects or attempts to collect  
8 debts which it has purchased after default.

9 15. Portfolio is a "debt collector" as that term is defined  
10 by FDCPA § 1692a(6).

11 **V. Factual Allegations**

12 16. Plaintiff incurred a debt for personal, family, and  
13 household purposes with CitiBank which ultimately went  
14 into default.

15 17. The debt was subsequently assigned or sold to Portfolio  
16 for collection purposes.

17 18. In or about January 2009, Portfolio's collectors began  
18 calling Plaintiff concerning the CitiBank debt.

19 19. During the week of January 19, 2009, Portfolio's  
20 collector telephone Plaintiff on her cell phone and left  
21 a voice message for Plaintiff to return the call.

22 20. During the Week of January 26, 2009, Portfolio's  
23 collector began calling Plaintiff at her place of  
24 employment.

25 21. Plaintiff teaches school at the Maricopa High School,

1 Maricopa, Arizona.

2 22. Plaintiff is unable to take personal calls at work  
3 because she is teaching class all day.

4 23. From January 26, 2009 and February 9, 2009, Portfolio  
5 telephone Plaintiff at her school no fewer than five  
6 times, and left messages.

7 24. On Tuesday, February 3, 2009, Portfolio's collector,  
8 Mrs. Crider called the school's attendance office and  
9 left a message with the attendance clerk for Plaintiff  
10 to return her call.

11 25. The attendance clerk sent Plaintiff an email informing  
12 her of the call from Ms. Crider and the message to call  
13 her.

14 26. On Monday, February 9, 2009, Portfolio's collector  
15 called the school and left a message on the voice mail  
16 for the Counseling Clerk, which she forwarded to  
17 Plaintiff.

18 27. On Tuesday, February 10, 2009, Plaintiff returned the  
19 call to Portfolio's collector, Crider, and told her to  
20 stop calling her at work, and that she would be filing  
21 bankruptcy.

22 28. Crider told Plaintiff that she had a copy of her credit  
23 report, and that if Plaintiff could afford to pay her  
24 mortgages, then she could also afford to pay Portfolio.

25 29. Crider also told Plaintiff that she would not be able to

1 claim bankruptcy, and that her bankruptcy case would be  
2 dismissed.

3 30. Crider also told Plaintiff that after the bankruptcy  
4 case was dismissed, she would owe more than she does now  
5 because Portfolio would continue to add interest to the  
6 debt.

7 31. Crider asked for Plaintiff's address, and Plaintiff gave  
8 her the address of her bankruptcy attorney.

9 32. Crider then told Plaintiff that whether her bankruptcy  
10 case was dismissed or discharged, it did not matter.

11 33. On Monday, March 2, 2009 Portfolio's collector "Robin"  
12 telephoned Plaintiff.

13 34. Plaintiff told Robin that Crider had her lawyer's  
14 information and that it should be in the file.

15 35. Plaintiff also told Robin not to call her again and to  
16 quit harassing her.

17 36. Robin became very rude and belligerent towards  
18 Plaintiff.

19 37. Plaintiff told Robin to please calm down and to quit  
20 yelling at her.

21 38. Robin told Plaintiff that "anybody who owes us \$20,000  
22 can't threaten me."

23 39. Robin also told Plaintiff that if she had an issue with  
24 her to call her manager.

25 40. The messages left by Portfolio were "communications" as

1       that term is used in the FDCPA.

2   41. In one or more of the messages left by Portfolio for  
3       Plaintiff, Portfolio failed to state that the  
4       communication was from a debt collector, and therefore  
5       violated the FDCPA § 1692e(11). See Foti v. NCO  
6       Financial Systems, Inc., 424 F.Supp.2d 643 (2006); and  
7       Leyse v. Corporate Collection Services, Inc., 2006 WL  
8       2708451 (SDNY Sept. 18, 2006).

9   42. During this time, it was a regular part of Portfolio's  
10      debt collection practice to communicate with consumers  
11      by leaving messages with third parties without  
12      disclosing that the communication was from a debt  
13      collector.

14   43. During most of these calls to Plaintiff, Portfolio  
15      failed to give meaningful disclosure of the caller's  
16      identity in violation of FDCPA § 1692d(6).

17   44. Plaintiff was very embarrassed and angry that Portfolio  
18      would continue to call her at work and leave messages  
19      with her co-workers.

20   45. As a result of Defendant's actions as outlined above,  
21      Plaintiff has suffered damages including, but not  
22      limited to, embarrassment, humiliation, anger, and other  
23      emotional distress.

24   46. Defendant's actions as outlined above were intentional,  
25      willful, and in gross or reckless disregard of

1 Plaintiff's rights and part of its persistent and  
2 routine practice of debt collection.

3 47. In the alternative, Defendant's actions were negligent.

4 **VI. Causes of Action**

5 **a. Fair Debt Collection Practices Act**

6 48. Plaintiff repeats, realleges, and incorporates by  
7 reference the foregoing paragraphs.

8 49. Defendant's violations of the FDCPA include, but are not  
9 necessarily limited to, 15 U.S.C. §§ 1692c(a)(2),  
10 1692c(b), 1692d, 1692d(6), 1692e, and 1692e(11).

11 50. As a direct result and proximate cause of Defendant's  
12 actions in violation of the FDCPA, Plaintiff has  
13 suffered actual damages.

14 **VII. Demand for Jury Trial**

15 Plaintiff hereby demands a jury trial on all issues so  
16 triable.

17 **VIII. Prayer for Relief**

18 WHEREFORE, Plaintiff requests that judgment be entered  
19 against Defendant for:

- 20 a) Statutory damages of \$1,000 pursuant to §1692k;  
21 b) Actual damages in an amount to be determined by  
22 trial;  
23 c) Costs and reasonable attorney's fees pursuant to  
24 §1692k; and  
25



1           d)    Such other relief as may be just and proper.

2  
3           DATED   March 30, 2009.

4  
5                               s/ Floyd W. Bybee  
6                               Floyd W. Bybee, #012651  
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